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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1958

No. 873

THEODORE R. GIBSON, RUTH PERRY, VERNELL ALBURY and GRATTAN E. GRAVES, JR.,
Petitioners,

v.

FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Florida entered on December 19, 1958.

Opinion Below

The opinion of the Supreme Court of Florida is reported at 108 So. 2d (Adv. page 729) and is set out in the appendix hereto *infra*, at page 25. Involved herein are the constitutional rights and legal obligations of petitioners, as witnesses called to testify before the respondent legislative investigatory committee organized pursuant to Chapter 57-125, Laws of Florida, 1957. The issue raised is whether those rights and obligations are defined by the Supreme Court of Florida in accord with the requirements of the Fourteenth Amendment to the Constitution of the United States.

Jurisdiction

Jurisdiction of this cause is invoked under Title 28, United States Code, § 1257(3). The judgment of the Supreme Court of Florida was entered on December 19, 1958 (R. 146). Petition for rehearing and application for a stay of the mandate pending the filing and disposition of the petition for writ of certiorari by this Court was denied on January 28, 1959. Application to this Court for a stay of the mandate and execution of the judgment of the Supreme Court of Florida was granted on February 24, 1959.

Questions Presented

1. Whether a state legislative committee may require petitioners, on penalty of contempt, to disclose whether they are members of the National Association for the Advancement of Colored People, whether certain persons allegedly suspected of subversive activity are known to them and are or have been members of the Association, without violating petitioners' right of privacy and freedom of belief and association as guaranteed by the Fourteenth Amendment to the Constitution of the United States?

2. Whether respondent, the state legislative committee, has sufficiently met the standards of pertinency set forth in *Watkins* v. *United States*, 354 U. S. 178, to justify the lower court in overruling all of petitioners' objections to answering questions on the ground that pertinency to a legitimate legislative purpose had not been shown with unmistakable clarity and whether to require petitioners to respond in such circumstances constituted a violation of the due process clause of the Fourteenth Amendment?

3. Whether respondent, the state legislative committee, in condemning, castigating and impugning the character

and integrity of witnesses who elected to rely upon the protection of the federal Constitution in refusing to answer questions deemed an infraction of claimed constitutional rights, had so abused its basic responsibility to conduct its hearings in accord with elemental requirements of due process and fair play as to afford a constitutional justification to petitioners Gibson and Albury in refusing to submit to interrogation?

Statute Involved

Chapter 57-125, Laws of Florida, 1957

Section 1. There is hereby created a special committee of the Legislature to be composed of seven members, three of whom shall be appointed from the membership of the State Senate by the President, and four of whom shall be appointed from the membership of the State House of Representatives by the Speaker. The members of said committee shall serve as such until discharged by the President of the Senate and the Speaker of the House of Representatives upon receipt of their report at the regular 1959 session of the Legislature.

Section 2. It shall be the duty of the committee to make as complete an investigation as time permits of all organizations whose principles or activities include a course of conduct on the part of any person or group which would constitute violence, or a violation of the laws of the State, or would be inimical to the well-being in orderly pursuit of their personal and business activities by the majority of the citizens of this State. Such investigations shall be conducted with the purpose of reporting to this Legislature of the activities of such organizations to the end that corrective legislation may be adopted if found necessary to correct any abuses against the peace and dignity of the State.

Section 3. (1) The committee is authorized to employ such experts, clerical and other assistance as may be re-

quired; to require by subpoena or otherwise the attendance of such witnesses and the production of such papers, books and documents, and to administer such oaths and to take such testimony and to make such expenditures within the limitation herein authorized as it may be necessary in the performance of its duties.

(2) Should any witness fail to respond to the lawful subpoena of the committee, or having responded fails to answer all lawful inquiries or turn over evidence to this committee, the committee may file a petition before any Circuit Court in Florida setting up such failure on the part of said witness. On the filing of such petition the court shall take jurisdiction of the witness and the subject matter of said petition and shall direct the witness to respond to all lawful questions and to produce all documentary evidence in its possession which is lawfully demanded. The failure of any witness to respond pursuant to the order of the Court shall constitute a direct and criminal contempt of court and the Court shall punish said witness accordingly.

Section 4. The committee shall report to the 1959 regular session of the Legislature the results of its investigations, together with its recommendations, if any, for necessary legislation. There is hereby appropriated from the general revenue fund for expenses of the committee in conducting its investigation the sum of $75,000 which shall be expended under the direction of the committee.

Section 5. This Act shall take effect immediately upon becoming a law.

Statement

On February 6, 1958, petitioners Ruth W. Perry (R. 25), Vernell Albury (R. 39), and G. E. Graves (R. 30), and on February 25, 1958, petitioner Theodore Gibson (R. 10), were served with subpoenas returnable on February 26, 1958, requiring them to attend and testify under oath at an investigation conducted by respondent in Miami, Florida,

pursuant to Chapter 57-125, Laws of Florida, 1957, and to bring all books, records and lists of members of the National Association for the Advancement of Colored People. Petitioners Perry and Albury sought, without success, to quash their subpoenas in the Circuit Court of Dade County. After hearing their motions were denied on February 25, and on appeal to the Supreme Court of Florida the decision of the lower court was affirmed in *In re Petition of Edward T. Graham*, 104 So. 2d 16 (1948).

Petitioners appeared at the investigation on February 26 as ordered, but brought no records or list of members of the National Association for the Advancement of Colored People (R. 11, 21, 31, 40) and refused to answer various questions on the ground that (1) the questions were not pertinent to the inquiry which the committee was authorized to undertake; and (2) were violative of rights of privacy, freedom of belief and association secured against state encroachment by the due process clause of the Fourteenth Amendment; that (3) answers to the questions posed would violate the lawyer-client privilege as recognized in that jurisdiction; and that (4) the committee by its conduct and statements had stripped the hearing of that objectivity and fairness essential to elemental due process and had thereby lost authority to require persons to submit to the public embarrassment, humiliation and persecution incident to being questioned by the committee.

For refusing to answer questions and produce the membership list of the Association, each of these petitioners was cited for contempt by the committee (R. 12, 22, 32, [illegible]). A petition was filed in the Circuit Court of Dade County to require them to show cause why they should not be required to answer all lawful questions and to respond to the subpoena *duces tecum* requiring the production of books, papers, records and lists of members of the Association (R. 8, 15, 20, 25, 30, 35, 39, 43).

At the hearing on the order to show cause on July 3, 1958, in the Circuit Court of Dade County, all objections and claims, both legal and constitutional, asserted by these petitioners to vindicate their conduct were overruled (R. 52, 53), and they were ordered to appear before the committee on August 11, 1958, and answer all the questions and to bring all the books, papers, records and lists of memberships called for in the subpoena *duces tecum*.[1]

Petitioners' motion to stay proceedings pending an appeal to the Supreme Court of Florida was denied on July 11, 1958 (R. 19). Application to the Supreme Court of Florida for a stay was granted on July 30, and the cause brought there for a hearing on the merits on September 2, 1958, for the purposes of determining whether the applicable law as defined by that court in *In re Petition of Edward T. Graham, supra*, was in conflict with the subsequent decision of this Court in *National Association for the Advancement of Colored People* v. *Alabama*, 357 U. S. 449 (R. 8).

On December 19, as aforesaid, the Supreme Court of Florida modified the judgment of the court below and as modified affirmed same. In so doing it upheld the constitutionality of Chapter 57-125, Laws of Florida, 1957, authorizing the investigation; held that the questions propounded to petitioners were not lacking in pertinency; that the committee had not shown such bias or prejudice as to warrant a refusal on the part of petitioners Gibson and Albury to submit to questioning; that the committee could require petitioners to answer questions concerning their own membership in the Association, their association with named persons allegedly suspected of subversion, and concerning such persons' membership in or identification with the

[1] At this hearing and in the hearing in the Supreme Court of Florida the issues involving these petitioners and those involving other witnesses before the committee were consolidated and disposed of at the same time.

Association. The court found a justification for the committee's action in the fact that it was investigating the infiltration and penetration of organizations by subversives and persons engaged in other illegitimate activities and in the right of states to petition Congress to amend the federal Constitution. This state interest was held to be sufficiently demonstrated where the committee states that it has testimony that the person about whom inquiry is made is a member of the Communist Party, even though the latter has denied such membership under oath. Further, it overruled all objections asserted by petitioner Graves to answering questions based on the attorney-client privilege.

At the outset of the hearing the Chairman made the following statement:

> As Chairman of this Committee, and for the benefit of witnesses subpoenaed, I wish to make an opening statement with regard to these hearings and the questions under inquiry. The purpose of this statement is to aid the various witnesses before the Committee to determine the pertinency of the questions propounded to them to the questions under inquiry. To this end, the several witnesses' careful attention is invited to the following statement, and I am now going to read to the witnesses the Act of the Florida Legislature that created this Committee . . . .

He thereupon proceeded to read the Senate Resolution and Chapter 57-125 in full and then made the following statement:

> The present hearings will be concerned with the activities of various organizations which have been or are presently operating in this State in the fields of, first, race relations; second, the coercive reform of social and educational practices and mores by litigation and pressured administrative action; third, of labor; fourth, of education; fifth, and other vital phases of life in this State. They shall also be concerned with the Communist Party, its members, Com-

munist action and Communist front organizations, their members, their aims and objectives, activities and the degree, if any, to which Communists and Communistic influence has been successful in penetrating, infiltrating, and influencing the various organizations and members thereof which have been, or are now, operating in the above fields.[2]

The witnesses were then called and were advised by Mr. Hawes, counsel for the committee, that they would be permitted to make a statement concerning their affiliation with the Communist Party.

G. E. Graves

Mr. Graves was asked whether his counsel was an N.A.A.C.P. counsel (R. 64). He was questioned concerning testimony in regard to disposition of Association records testified to at a hearing of a predecessor committee (R. 67). He was asked whether he had made an effort to secure the return of Association records which he had testified before a predecessor committee that he had sent to New York but would attempt to secure (R. 69, 70.) He was asked whether he had any discussion with officials of the NAACP as to whether the Association intended not to cooperate with the committee (R. 71). He was asked what records he had sent out of Florida (R. 71); who was counsel of the Miami Branch before him (R. 72). He was asked "Can you tell me whether or not the NAACP and their counsel have determined that all NAACP witnesses before this Committee will not claim the Fifth Amendment, but will just simply refuse to answer under the First Amendment to the Federal Constitution, thereby gaining the same end? Can you tell me that?" (R. 73). He was asked whether he knew Bertha Teplow (R. 73); Anna Rosenblatt (R. 74); Edward T. Graham (R. 75); whether Mr. Graham was a

[2] This statement is not included in the record filed here but it is repeated in substance by counsel for the committee at pages 99-100 of this record.

member of the NAACP (R. 75); did he know Rev. Theodore Gibson (R. 76); Jose Carbonell (R. 79); Ruth Perry (R. 80); G. W. Hawkins (R. 80); Claude M. Gardner (R. 81); Blanche McKinney (R. 82); Richard Gerstein (R. 82); did he know who had custody of the books, papers and membership list which the committee called for by subpoena *duces tecum* (R. 85)?

He refused to answer all of these questions and persisted in his refusal when ordered by the Chairman to answer the questions on the grounds that the questions violated his right of freedom of association, were lacking in pertinency and violated the attorney-client privilege.

At the close of his testimony, the decision of the Chairman to require him to answer was affirmed by the committee as a whole (R. 86), and the committee voted that the witness be cited for contempt (R. 87). Petitioner Graves was permitted to make a statement denying membership in the Communist Party or adherence to its ideology (R. 89).

Ruth W. Perry

Mrs. Perry read a statement indicating that she appeared under protest in response to subpoena and reserved her challenge to the authority of the committee to compel her appearance and testimony; she agreed to answer all lawful and pertinent questions, but stated that she had brought no records or lists of membership of the Association; that she considered the demand for such records and lists invalid and an invasion of rights of due process and freedom of speech and association. She asserted that the Association was not advocating or threatening violence, was not subversive or communistic, but that its objective was to improve the Negro's status (R. 94-96). She refused to answer whether she was vice-president of the Miami Branch (R. 97), or secretary of the Florida Conference of Branches (R. 97). She was asked did she know Rev. Gib-

son, Rev. Hawkins (R. 99). Then the following statement was made to her:

> Mrs. Perry, you refuse to produce the lists of membership for the NAACP in Florida here, and you read a prepared statement that the NAACP is a peaceful, lawful organization; has nothing, in effect, to hide; nor neither does your association with that organization give you anything to hide, and I will now inform you that this Committee has in its files the names of in excess of one hundred fifty present and past members of the Communist Party in Florida; and I will ask you, if the NAACP has no members of the Communist Party in it, why will you not deliver to this Committee the list of that membership so we may compare it with a list of known Communists and ex-Communists in this State? (R. 98-99)

She was asked did she know Arlington Sands (R. 101). She was advised that at a previous hearing a witness had testified that he had seen Sands at Communist Party meetings in Miami and that he also knew him to be a member of the Miami Branch of the NAACP (R. 103). She was asked whether she knew Abe Sorkin and whether he was a member of the NAACP (R. 105); Bobbie Graff, and whether she knew him to be a member of the NAACP (R. 105). She was asked similar questions with reference to Manny Graff (R. 106). She was advised that a Louis Popps had testified that he had been a member of the Communist Party in Dade County and a member of the NAACP, and that he had seen Arlington Sands, Abe Sorkin, Bobbie and Manny Graff at Communist Party meetings, and knew these people to be members of the Miami Branch of the NAACP (R. 107). She was asked whether the NAACP and her associate counsel had determined that NAACP officials were not going to cooperate with the committee (R. 108). Then the committee counsel made the following statement:

> . . . if I named off every member of the Communist party present and past in Florida to you and asked you whether or not you know any of those people,

> to be members of the Miami Branch of the NAACP would your answer be the same? Would you refuse to answer that question? If you will, there's no use to take the time doing it. (R. 109).

Did she know Bertha Teplow, and did she know her to be a member of the NAACP Miami Branch (R. 111). The same question was asked with respect to Anna Rosenblatt (R. 112). Did she remember testifying before at hearings of the predecessor to this committee and promising that committee that she would attempt to secure the records that she had turned over to Mr. Graves for transmittal to New York (R. 113). Previous testimony was read to her and she was asked if she was acting in good faith when she had testified at that time (R. 115).

Mrs. Perry refused to answer each of these questions on the ground that they were lacking in pertinency and violated her right of freedom of association and persisted in her refusal although ordered to answer by the Chairman.

The action of the Chairman of the committee was ratified (R. 117-118). Representative Herrell then made the following statement:

> . . . There's been a great hue and cry throughout this state whenever we've had our Committee meetings, that the witness wasn't having a fair opportunity to make his statement. Now, we see it on the other side of the fence.
>
> This same witness sat here two years ago and gave us a good deal of this information. Now, supposedly, we're making another investigation, and I think that any witness that sits in this chair and cries for the right to make a statement and reads a report that is prepared for them by counsel, and yet refuses to answer questions that would allow this Committee to render a service to the State of Florida . . . we are trying to determine, and we have evidence to believe that within these various organizations there are subversive activities, and I say that any witness who appears before this Committee who refuses to give the help to this Committee and render

a service to the State of Florida is not fit to be a citizen of the State of Florida and is rendering the greatest disservice to the organization of which they are a member and to the citizens of Florida, and this is the type of action that leads people to believe that some of these organizations are not sincere in their endeavors.

I have fought on the floor of the House time and time again against witch hunt pieces of legislation. I was the only man in the House of Representatives that went before a Committee and fought a witch hunt bill that we had. Time and time again, as a member of the Committee, I have insisted that these people be treated fairly before the Committee, and I think that this is a disgrace, not only from this witness but the ones that I didn't have an opportunity to observe yesterday because I was under doctor's orders not to be here; and I move you, Mr. Chairman, that Counsel prepare procedures to cite this witness for contempt. (R. 121).

Representative Hopkins endorsed Representative Herrell's views as follows:

Mr. Chairman, I second the motion, and I'd like to state just this: We sit here doing, at best, a difficult task, an unpleasant task, but a task which was vested upon this Committee by the Legislature of the State of Florida.

It's difficult for me to reconcile in my mind, as a citizen, and as a member of the Legislature, how it is that these groups, who have these noble, shining purposes, betterment of races, and so forth, can be a part of any organization that would have as its purpose the tearing down of the purpose that they're trying to fight for. On the one hand, I'm mixed with feelings by the groups who are trying to undermine the foundations of this country, hide behind the protection of those foundations, and not wanting the public to know.

All we have said in this Committee is we have ample evidence. We're trying to find out through the witnesses some basis to let the people of Florida know that there is or is not subversive activity, and

> when the people who are identified with these groups, who claim that they are noble, fine groups, and are not subversive, come in and constantly and continually refuse to cooperate, how can we draw but one conclusion, and that is, that the organizations are not so noble and shining, and they are not too proud of them, and I echo Mr. Herrell's remarks and with hope that we can expedite these proceedings by citing these witnesses for contempt as soon as possible and quit being somewhat of a circus here, and having people such as this person, who has, apparently, a public position, be able to hoodwink and deceive the people of Florida any longer. (R. 122-123)

Counsel for Mrs. Perry then asked permission of the committee for petitioner to answer the statements, but this was refused (R. 126-127). Then Mrs. Perry was permitted to make a statement denying membership in the Communist Party (R. 130-131). Petitioner requested that the statements of Representatives Herrell and Hopkins reflecting upon her character and integrity be expunged from the record, but this request was denied (R. 133).

Rev. Theodore R. Gibson

Father Gibson appeared before the committee and stated in substance that in view of the position of the committee as stated by Representative Herrell that when a witness, such as Mrs. Perry, refused to answer questions, he was not fit to be a citizen, that the committee had disqualified itself from proceeding further; that he was an American citizen and refused to permit the committee or any other to deny him his lawful constitutional rights; that he was not a Communist; that he believed in democracy. He then refused to submit to further questioning (R. 135-136). The committee voted that contempt proceedings be commenced against him (R. 137).

Mrs. Vernell P. Albury

Mrs. Vernell P. Albury read a short statement indicating that she was not a Communist and never intended to be one; and that in light of the committee's action in endorsing the intemperate remarks made by Representative Herrell, reflecting upon the integrity and motivation of witnesses who exercised their constitutional rights before the committee, in her judgment, the committee had disqualified itself to sit as a fact finding body and afford to her or any other witness due process of law. She, therefore, refused to submit herself further to the jurisdiction of the committee (R. 141-142). It was voted that proceedings be instituted against her for contempt (R. 143-144).

REASONS FOR ALLOWANCE OF THE WRIT

I. The Decision Below Is In Conflict With the Decisions of This Court In Respect to The Scope and Reach of First Amendment Rights.

The court below held that in the absence of an affirmative evidenciary showing of a deterrent effect upon freedom of association resulting from the enforced disclosure of the Association's membership list, the custodians of that list could be required to respond to a subpoena *duces tecum*, to bring such list to hearings before the respondent committee and refer to such records to answer inquiries concerning the connection of vairous persons suspected of subversive activity to the National Association for the Advancement of Colored People. Moreover, each individual could be compelled to disclose his own affiliation with the Association, and to state whether he knew various persons suspected of Communist activity and whether he knew such persons to be members of the NAACP. The fact that the suspect, about whom the inquiry was made, denies under oath membership in the Communist Party was

held in no way to affect the committee's right to elicit an answer to the question posed.

Freedom of belief and of association are secured against state interference absent same compelling justification for the intrusion. See *National Association for the Advancement of Colored People* v. *Alabama, supra*; *Sweezy* v. *New Hampshire*, 354 U. S. 234; *American Communications Association* v. *Douds*, 339 U. S. 382, 402; *United States* v. *Rumely*, 345 U. S. 41, 46, 47. There is no question that this is the law. The Supreme Court of Florida, however, seeks to reduce this constitutional proscription against unwarranted governmental interference with individual privacy and freedom of association to meaningless and extraneous judicial verbiage.

In the view of the Supreme Court of Florida, governmental interference with First Amendment rights are permissible, absent an affirmative showing that as a direct consequence thereof there results some deterrent to the exercise of freedom of speech or association. This approach, it is submitted, is alien to the rationale of this Court. In delineating the scope and extent of First Amendment guarantees, this Court has held that all governmental intrusion with freedom of belief or association must be closely scrutinized, and that any such interference is proscribed absent a compelling subordinating societal interest which the state is empowered to protect. See *Sweezy* v. *New Hampshire, supra*, at page 265. The burden is on the state to demonstrate the necessity for the regulation, because there is an implicit assumption in the decided cases of this Court that any governmental interference in this area must first be justified before it can be given constitutional sanction. See *Sweezy* v. *New Hampshire, supra*; *National Association for the Advancement of Colored People* v. *Alabama, supra*. In giving life and meaning to these constitutional guarantees this Court balances the individual's constitutional right to freedom of speech, belief and

association against the societal interest in protecting the general welfare. The state cannot disregard the rights of individuals to such freedoms or its own constitutional obligations in that respect on a mere assertion that it is protecting itself against subversion. See *Sweezy* v. *New Hampshire, supra,* at page 265. Yet, this is the substance of the state's argument. The asserted legislative objective of this investigation is to determine the extent of Communist infiltration into the NAACP and other organizations operating in the fields defined by Chapter 57-125, Laws of Florida, 1957, and delineated by the Chairman at the outset of the February 26th hearing (see restatement of Chairman's remark by counsel for the committee, R. 100). This, according to the court below, affords sufficient justification for the committee action.

Under the standard approved below, however, there is no private area of speech, belief, or association which cannot be pierced. The state's interest has to be more clearly established, petitioners submit, to warrant such a marked deviation from prior holdings of this Court. Assuming infiltration and penetration to be as alleged, there is no state or federal authority which could restrict and regulate a subversive's mere membership in a private organization engaged in legitimate activity. Cf. *DeJonge* v. *Oregon,* 299 U. S. 353, 365, where the Court said:

> The holding of meetings for peaceable political action cannot be proscribed. Those who assist in the conduct of such meetings cannot be branded as criminals on that score. The question . . . is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violation of valid laws.

Here the state seeks to use allegedly subversive activity in no way connected with the activities of these petitioners or with the activity of the NAACP as the bases for intrusion into the privacy and freedom of association of these petitioners and of other members of the NAACP. Such intrusion, it is respectfully submitted, cannot be reconciled with this Court's decisions in *National Association for the Advancement of Colored People* v. *Alabama*, supra; *Sweezy* v. *New Hampshire*, *supra*; *DeJonge* v. *Oregon*, *supra*; or with this Court's traditional approach to First Amendment issues.

The NAACP, as the record in this case discloses and as this Court knows from the record of other cases, is an organization concerned principally with seeking to remove racial barriers which have restricted Negro Americans in their efforts to exercise the rights and assume the obligations incident to full-fledged American citizenship. Members of the Association in Florida, and throughout the United States, seek to initiate, promote and execute lawful activities designed to bring an end to all facets of enforced racial discrimination in the United States. As long as such activities are themselves legitimate and are carried on in a lawful fashion, members of the Association undoubtedly have the protection of the federal Constitution in advocating the end of racial segregation and are free to associate with others to accomplish this result. See *National Association for the Advancement of Colored People* v. *Alabama*, *supra*.

Needless to say, neither the Association nor its members are free to engage in subversive activities or in any other illegal conduct. See *DeJonge* v. *Oregon*, *supra*. Yet, it seems equally clear that a state cannot curb or interfere with the legitimate activities of the members of the Association by a mere assertion that subversives have infiltrated the organization. Unless this be true, the proscription of the First and 14th Amendments against governmental

interference with individual freedom of association and belief would be largely nullified. Since under the opinion below, it is submitted, such a result would necessarily follow, it is important that this Court review the instant decision of the Supreme Court of Florida.

II. The Refusals of Petitioners to Answer Questions Propounded On the Ground that They Were Not Pertinent Or Relevant Were Soundly Based and Should Have Been Sustained.

The committee has failed to show with unmistakable clarity the precise relationship between the questions propounded and the inquiry authorized so as to require petitioners to answer those questions which they refused to answer on the ground that they were not pertinent. The court below has found the authorizing act valid and has held that the investigation undertaken related to a legitimate purpose. While these conclusions raise grave constitutional questions in themselves, even assuming that they are correct, nonetheless, the Fourteenth Amendment's due process requirements have not been satified. For the court below has failed to meet the yardstick established in *Watkins* v. *United States*, 354 U. S. 178 as to pertinency, and sanctions inquiries broad enough to constitute fishing expeditions into the private and personal affairs of individuals outside the area of legitimate legislative activity.

The Chairman, at the outset of the hearing, sought to define the area of inquiry to which the committee planned to devote itself. He said that the hearing would concern itself with "the activities of various organizations . . . operating . . . in the fields of race relations; the coercive reform of social and educational practices and mores by litigation and pressured administrative action; of labor; of education and other vital phases of life of this State." Further, the inquiry was to concern itself with the Communist Party.

its members and Communist-front organizations and the degree to which Communist and Communist influence had been successful in penetrating, infiltrating and influencing the various organizations and members who have been or are now active in the above fields (R. 99-100).

In simple language this means that the committee was undertaking to investigate the Association and was seeking to show that the Communist Party had penetrated, infiltrated and influenced the Association and its members.

Petitioners do not question the power of the state to conduct investigations, but that power is not unlimited. See *Watkins* v. *United States, supra.* The investigation cannot be undertaken merely to smear or hold up to public scorn those investigated. See *Watkins* v. *United States* at page 187. These petitioners were called because of their connection with the Association and because of that organization's advocacy of the removal of all forms of racial discrimination from the state's educational system and from other areas. Petitioners were called to testify principally to demonstrate that they and their organization were engaged in subversion. [See statement of Rep. Hopkins (R. 122-123)].

The whole approach to these witnesses was highly prejudicial, and questions that were asked were those which would necessarily inflame the public and embarrass petitioners. That this is clear can be demonstrated by the following examples:

> Q. Can you tell me whether or not the NAACP and their counsel have determined that all NAACP witnesses before this Committee will not claim the Fifth Amendment, but will just simply refuse to answer under the First Amendment to the Federal Constitution, thereby gaining the same end? Can you tell me that? R. 73)

Here the Committee's counsel seeks to place persons, who assert First Amendment rights, in the same category in the public's mind as persons who refuse to answer questions on the ground of self-incrimination. In view of the known public inferences and condemnation presently attendant upon an individual's refusal to answer questions on the latter ground, this statement was highly prejudicial and could only have been intended to publicly embarrass and humiliate.

By the following questions:

> Q. Mrs. Perry, you refuse to produce the lists of membership for the NAACP in Florida here, and you read a prepared statement that the NAACP is a peaceful, lawful organization; has nothing, in effect, to hide, nor neither does your association with that organization give you anything to hide, and I will now inform you that this Committee has in its files the names of in excess of one hundred fifty present and past members of the Communist Party in Florida, and I will ask you, if the NAACP has no members of the Communist Party in it, why will you not deliver to this Committee the list of that membership so we may compare it with a list of known Communists and ex-Communists in this State? (R. 98-99).
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> • • •
>
> Q. Now, Mrs. Perry, I now inform you that yesterday Louis Popps testified that he had been a member of the Communist Party in Dade County, and a member of the NAACP; that he saw the following people at Communist Party meetings: Arlington Sands, Abe Sorkin, Bobbie Graff and Manny Graff; that he also knew those people to be members of the Miami Branch of the NAACP, as well as in attendance, and he said that Abe Sorkin, he could positively identify as a card-carrying member of the Communist Party, as well as being in attendance on the Communist Party meetings that he attended as a member himself; and I now ask you again whether you know any of those people to be presently members of the NAACP in Miami? (R. 107).
>
> • • •

> Q. . . . if I named off every member of the Communist Party present and past in Florida to you and asked you whether or not you know any of those people to be members of the Miami Branch of the NAACP, would your answer be the same? Would you refuse to answer that question? (R. 109).

counsel for the committee sought to connect petitioner with subversion and to smear the NAACP with which petitioner is identified as subversive. No legitimate legislative purpose could be served by such questions. They were intended to cast doubt upon the legality of petitioners' and the NAACP's objectives and activities. Within the meaning of *Watkins* v. *United States, supra,* such questions were not pertinent to a legitimate legislative purpose, and in requiring petitioners to answer them, the court below reached a conclusion at variance with petitioners' rights of due process of law secured under the Fourteenth Amendment as defined by this Court.

III. The Inflammatory and Intemperate Statements by Mr. Herrell and Mr. Hopkins Castigating the Personal Integrity and Character of Petitioners For Asserting Their Constitutional Rights Deprived the Hearing of Fundamental Due Process and Justified the Refusal of Petitioners Albury and Gibson to Submit to the Humiliation, Persecution and Intimidation Incident to Being Questioned by the Committee.

The statements of Representatives Herrell and Hopkins clearly reveal that the committee was not seeking information; it was bent on subjecting petitioners to public humiliation and discomfort solely because of their beliefs, their membership and lawful activities within the NAACP.

In spite of petitioner Berry's express reliance upon her constitutional rights on the advice of qualified legal counsel, her denial of Communist Party affiliation, and her

respectful demeanor before the committee, the commitee cast grave aspersions on Mrs. Perry's character and sincerity. It denied Mrs. Perry's fitness to be a citizen of Florida, termed her testimony during the hearing (as well as that of petitioner Graves) "a disgrace," and deplored her being "able to hoodwink and deceive the people of Florida . . ." As a consequence, Rev. Theodore R. Gibson and Mrs. Vernell P. Albury, who were subsequently called, declined to testify.

The committee had openly revealed itself as a prejudiced and biased investigating body which prejudged witnesses' guilt, refused to recognized legitimafe reliance on federal constitutional rights, and engaged in scurrilous attacks on the character and sincerity of persons appearing before it. To require Rev. Gibson and Mrs. Albury to pay the penalties exacted from Mrs. Perry for the "crime" of asserting constitutional rights would deny these petitioners rights "implicit in the concept of ordered liberty . . ." See *Palko* v. *Connecticut*, 302 U. S. 319, 325.

The law is clear that the "hearing" required in civil and criminal suits must be a fair and full one before an impartial court in order to satisfy the constitutional guarantee of due process. "Condemnation shall be rendered only after trial," and due process is not afforded if the hearing is no more than a "sham or pretense," *Palko* v. *Connecticut, supra*, at 327; (see also *Mooney* v. *Holohan*, 294 U. S. 103, 112) or if "the whole proceeding is a mask," *Moore* v. *Dempsey*, 261 U. S. 86, 91; or if "the opportunity to be heard is merely colorable or illusive," *Ryans Furniture Exchange Inc.* v. *McNair*, 120 Fla. 109, 118, 162 So. 483, 487. Similarly, such hearings held by legislative investigating committees will violate due process under certain circumstances. See *Watkins* v. *United States, supra*, and *Sweezy* v. *New Hampshire, supra*.

Moreover, the "sanction[s] emanating from legislative investigations" are extremely serious, and may cause damage not only to the witness involved but have an "inhibiting effect in the flow of democratic expression and controversy ...". *Sweezy* v. *New Hampshire, supra* at 248; see *Watkins* v. *United States, supra* at 197-198; *Wieman* v. *Updegraff*, 344 U. S. 148.

In *Watkins* v. *United States, supra*, at 187, this Court cited several limitations on the power of legislative inquiry:

> There is no general authority to expose the private affairs of individuals without justifiction in terms of the functions of Congress . . . Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial department of government. No inquiry is an end in itself; it must be related to and in furtherance of a legitimate task of the Congress. *Investigations conducted solely for the personal aggrandizement of the investigators or to "punish" those investigated are indefeasible.* (emphasis added)

While *Watkins* deals with the power of the Congress, the due process clause of the Fourteenth Amendment places a similar limitation on state legislative investigatory committees. See *Sweezy* v. *New Hampshire, supra*. The actions of the committee in the case at bar, which in effect endorsed, approved and adopted the remarks of Representatives Herrell and Hopkins as those of the committee itself, made any expectation of a full and fair hearing groundless. Therefore, it is submitted, petitioners Gibson and Albury were constitutionally protected in their refusal to submit to what was in truth a "mock trial" in which petitioners were held up to public condemnation and humiliation and thereby convicted without being afforded due process of law.

CONCLUSION

Wherefore, for the reasons hereinabove stated, it is respectfully submitted that this petition for writ of certiorari should be granted.

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APPENDIX

(Opinion of Supreme Court of Florida)

(Filed December 19, 1958)

THORNAL, *J.*

We are here confronted by four separate appeals seeking review of a group of identical orders entered by one of the Circuit Judges of the Eleventh Judicial Circuit. By the orders each of the appellants was directed to appear before the appellee Florida Legislative Investigation Committee on August 11, 1958, and answer certain questions propounded by the Committee or else suffer the penalties of contempt of court with appropriate punishment. Certain appellants were directed to respond to a subpoena duces tecum by producing various records.

We are called upon to determine the nature and scope of the legislative power to investigate, and the pertinency of certain questions propounded to the appellants. We must consider the state and federal constitutional problems presented by a claimed right of privacy and association, and an asserted privilege against self-incrimination.

The appellee Committee was created by Chapter 57-125, Laws of Florida 1957. In the early part of 1958 the Committee was in the process of conducting an investigation to determine the existence or non-existence of so-called subversive activities in and against the State of Florida. They subpoenaed certain persons including all of the appellants who allegedly are members of the Miami Branch of the National Association for Advancement of Colored People, hereinafter referred to as NAACP. Some of the appellants were officers, others were directors, and others were merely members. The Committee also issued a subpoena duces tecum to certain of the appellants directing them to produce the membership lists, books and records of NAACP. At a Committee hearing held February 26 and 27, 1958, the several appellants declined to answer certain questions for

stated reasons which we will discuss later. Those who were summoned to do so likewise declined to produce the membership records of NAACP. In each instance the counsel for the Committee propounded the question, the witness declined to answer it, the Chairman of the Committee directed the witness to answer, and the witness again declined. The Committee itself then approved the action of the Chairman and directed its counsel to petition the Circuit Court for an order compelling answers and directing the production of the membership lists. Section 3, Chapter 57-125, Laws of Florida 1957. Emspak v. United States, 349 U. S. 190, 99 L. ed. 997, 75 S. Ct. 687. The Circuit Judge issued a show cause order to each of the appellants. After a full hearing, the Judge directed the appellants to answer certain questions. He directed three of the appellants to respond to the subpoena duces tecum requiring the production of records. His order provided that upon the failure of the witnesses to answer the questions or produce the membership lists, "then he [or she] shall be in contempt of this court and shall be punished accordingly." The appellants now seek reversal of the orders applicable to them respectively for various reasons hereafter noted.

The contentions of the several appellants vary somewhat according to the nature of the inquiries propounded to them and the reasons given for their refusal to answer. We will discuss these in our consideration of the problems presented by the separate groups of appellants. In addition we will also dispose of the contention that the membership list of the Miami Branch, NAACP, should not be produced pursuant to the subpoena duces tecum.

Basic Constitutional Principles Involved

The broad but vital principles of constitutional law asserted by the appellants will require cautious analysis when related to the situation presented by these appeals.

We are currently passing through what appears to be a period of transition in the application of established constitutional principles. While vocally expressing adherence to the biblical admonition that we "remove not the ancient landmark[s]", Deuteronomy 19:14, some admittedly sincere jurists, with the support of many equally sincere political scientists, have, in our view, undertaken to transplant many of the ancient landmarks of constitutional law. The result we think has been an application of these traditional concepts to situations for which they were never intended or, in other respects, a failure to apply them to situations for which they were intended.

In our effort to resolve some of these difficult and troublesome constitutional problems, we have reminded ourselves that it might be well to note the admonition of Section 15, Declaration of Rights of Virginia, which antedated our Declaration of Independence. In the cited document, the author George Mason, who was regarded as one of the most astute and farsighted of the architects of our government, suggested:

> "XV. *That no free government*, or the blessing of liberty, *can be preserved* to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and *by frequent recurrence to fundamental principles*." (Emphasis added.)

In similar fashion the authors of the Declaration of Rights of Massachusetts in Section 19 of that document stated:

> "A *frequent recurrence to the fundamental principles of the constitution*, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, *are absolutely necessary to preserve the advantages of liberty, and to maintain a free government.*" (Emphasis added.)

In recurring to certain fundamental principles the instant record invites our attention to two concepts of our constitutional democracy which we deem basic to our consideration of the problems presented and the ultimate solution thereof.

The first of these simply is that under the Bill of Rights incorporated in the Constitution of the United States, an individual citizen, regardless of race or creed, is entitled to enjoy certain inalienable rights which cannot be denied to him except in a proper case by due and orderly process of law. While recognizing the rights of the individual, we must of necessity at times reconcile the enjoyment of those rights with the sovereign prerogatives of the state. If and when the two come into conflict in a particular case, it often becomes a judicial responsibility to determine which shall be subordinated to the other under controlling provisions of the organic law.

The second basic principle to which we must here recur is a recognition of those aspects of our governmental structure which have produced a federalism of separate states. Consistent with the above mentioned tendencies in some quarters, we deem it appropriate to recall that American federalism is a co-ordinate union of divided sovereignties. E pluribus unum. If it be true, as our own State Constitution reminds us, that "All political power is inherent in the people", Section 2, Declaration of Rights of Florida, it is equally fundamental that the powers enjoyed by the federal government are those only which are specifically defined in the Constitution of the United States supplemented by those powers essentially implicit in the ones specified. In equal measure powers not so delegated to the federal government nor prohibited to the states were, by the Tenth Amendment to the Constitution of the United States, expressly reserved to the respective states or to the people thereof. It might be well to recall that the Federal Constitution was ratified by conventions of the individual states as separate sovereignties representing the people of each

particular state. Madison, Federalist 39. At no time did the people of all of the states as one composite nation-wide electorate ever pass on the organic document. See also Florida Law Journal, Vol. XVIII, No. 3, p. 65, "Counter-Revolution—An Estimate of the Situation" by R. C. Alley.

In approaching our discussion of the legal questions presented by the instant record, we do so in the belief that certain tendencies toward paternalistic nationalism, which we think we detect in the opinions of some courts and the philosophies of some leaders of government are, in our humble view at least, inconsistent with these traditional concepts of our constitutional democracy.

Rather than call upon the pristine exponents of the concept such as Jefferson, Madison, Mason and others of their colonial political persuasion, let us look to the most consecrated judicial advocate of centralized nationalism. In Barron v. Baltimore (US) 7 Pet. 243, 250, 8 L. ed. 672, 675, Chief Justice John Marshall wrote:

> "But it is universally understood, it is a part of the history of the day, that the great revolution which established the constitution of the United States, was not effected without immense opposition. Serious fears were extensively entertained that those powers which the patriot statesmen, who then watched over the interests of our country, deemed essential to union, and to the attainment of those invaluable objects for which union was sought, might be exercised in a manner dangerous to liberty. *In almost every convention by which the constitution was adopted, amendments to guard against the abuse of power were recommended. These amendments demanded security against the apprehended encroachments of the general government—not against those of the local governments.*" (Emphasis added.)

Spanning the gap of more than one hundred years, in 1958 Mr. Justice Frankfurter expressed the views of the

majority of the highest court of the land when in Knapp v. Schweitzer, — U. S. —, 2 L. ed. (2d) 1393, 78 S. Ct. —, he wrote:

> "It is relevant to remind that our Constitution is one of particular powers given to the National Government with the powers not so delegated reserved to the States or, in the case of limitations upon both governments, to the people. Except insofar as penal remedies may be provided by Congress under the explicit authority to 'make all Laws which shall be necessary and proper for carrying into Execution' the other powers granted by Art. 1, Sec. 8, the bulk of authority to legislate on what may be compendiously described as criminal justice, which in other nations belongs to the central government, is under our system the responsibility of the individual States."

We submit that we are not without respectable support for our view.

As we proceed now to a more detailed discussion of the problems at hand we remain fully conscious of the rights of appellants as citizens. These must be reconciled with any conclusion regarding the extent of the State's power to act. We must also consider the effect of certain decisions bearing on the State's authority when equated with the power of the federal government. In all of these involved deliberations, we must admittedly evaluate the influence of the authoritative voice of the Supreme Court of the United States in its interpretation of the federal organic law. All of this we now undertake.

Factual Background

The factual situation giving rise to these appeals falls logically into several distinct categories with regard to the various appellants. We summarize them as follows:

Appellant Ruth Perry

The principal questions which appellant Perry was directed to answer involved interrogations as to: whether she was then vice-president of the Miami chapter of the NAACP; whether she was then the secretary of the Florida Conference of NAACP; whether she knew various specifically named people. One particular question in the latter category should be pointed up in detail. The Committee counsel asked the witness, "Do you know a man named Arlington Sands?" Counsel thereupon explained to the witness that on the preceding day one of the witnesses before the Committee had testified that Arlington Sands had been seen by him at Communist Party meetings in Miami and that he also knew him as a member of the Miami Branch of NAACP. The witness Perry also refused to produce the membership list of the Miami Branch of NAACP although the subpoena duces tecum served upon her directed her so to do. The trial judge ordered appellant Perry to answer these various questions. Her objections to answering them were incorporated in a written statement which she filed with the Committee. The sum of her objections were that Chapter 57-125, Laws of Florida 1957, which created the Committee and defined its authority, abridged rights guaranteed to her by the First and Fourteenth Amendments to the Constitution of the United States, Sections 12, 13, 15 and 22 of the Declaration of Rights of the Constitution of Florida, Article II, and Section 16 of Article III, of the Florida Constitution. She objected further to producing the membership lists of the NAACP on the ground that the demand for this list constituted an invasion of her rights to due process of law, freedom of speech and association, and the corresponding rights of the NAACP.

Appellants Gibson and Albury

When appellants Gibson and Albury separately appeared before the appellee Committee, admittedly in re-

sponse to the subpoena served upon them, they were interrogated as to whether they had brought the requested membership lists of the NAACP. Each of these appellants thereupon read a prepared statement denying any affiliation with the Communist Party but refusing to answer any questions propounded by the Committee on the stated ground that in their view the Committee had demonstrated an antagonistic prejudice toward all the witnesses to the end that it had disqualified itself to conduct an impartial investigation. These witnesses then positively refused to submit to any questioning.

APPELLANT GRATTON F. GRAVES, JR.

This witness identified himself as the Miami Attorney for NAACP. He refused to produce any records of the NAACP on the grounds that it would require a breach of confidential relations with his client in violation of his constitutional rights of privacy and freedom of association and a lack of pertinency to the subject under investigation. He denied, however, that he had custody of any records. For similar reasons he declined to answer inquiries as to assurances which he gave the Committee at a prior hearing that the records of NAACP had been sent to New York and that he would undertake to obtain them. Appellant Graves refused also to answer inquiries as to whether he knew one Anna Rosenblatt, Edward T. Graham, Bertha Teplow, or Theodore R. Gibson. He also declined to answer inquiries as to his acquaintance with numerous other people. For the reasons above summarized he refused to identify the whereabouts or custodian of the records called for by the subpoena served upon him. The trial judge directed this witness to answer these various inquiries or else suffer the penalties of contempt.

Appellants Rosenblatt and Teplow

These witnesses were interrogated as to their place of birth; whether they were naturalized citizens of the United States; whether they were members of the Communist Party of Florida; whether they knew various individuals and whether they knew them to be members of the Communist Party; whether they were members of the NAACP in Dade County; whether they were members of such organizations as Southern Conference for Human Welfare, Civil Rights Congress, or the American-Hungarian Culture Club. They objected to answering this line of questioning on the grounds that it was not pertinent to the subject of the legislative inquiry; that it invaded their rights protected by Sections 1, 2, 12, 13 and 15 of the Declaration of Rights of the Florida Constitution, and the First, Fifth and Fourteenth Amendments to the Constitution of the United States. With reference to the questions as to whether the witnesses were affiliated with the Communist Party or had engaged in official activities for the Communist Party in Florida, the trial judge apparently held the view that Chapter 876, Florida Statutes, condemning subversive or seditious conduct against the State of Florida, remains a valid enactment despite the opinion of the Supreme Court of the United States in Commonwealth of Pennsylvania v. Nelson, 350 U. S. 497, 76 S. Ct. 477, 100 L. ed. 640. Therefore, he ruled that these witnesses could decline to answer these specific questions on the constitutional ground that by doing so they would be compelled to incriminate themselves contrary to Section 12, Declaration of Rights of Florida. The other types of questions the witnesses were required to answer.

Appellant Graham

After the filing of our opinion and mandate in the matter of In re Petition of Edward T. Graham, Fla. 1958, 104 So. 2d 16, the trial judge directed Graham to appear before

the appellee Committee and answer the questions which he had theretofore declined to answer. In the instant appeal Graham has again declined to answer the questions on the ground that since the filing of our mandate in the prior matter, the Supreme Court of the United States has announced its decision in National Association for Advancement of Colored People v. State of Alabama, ex rel. John Patterson, — U. S. —, 2 L. ed. (2d) 78 S. Ct. —. It was his position before the trial judge and is his position now before us that the last cited opinion of the United States Supreme Court in effect overrules and supplants our prior decision in the Graham matter to the extent that he should not be required to produce any membership lists or divulge the membership of the NAACP. The trial judge ruled otherwise.

CONSTITUTIONALITY OF STATUTE CREATING COMMITTEE.

The appellee legislative Committee was created by Chapter 57-125, Laws of Florida 1957. The powers and duties of the Committee are delineated in Section 2 of the cited statute, which reads as follows:

> "It shall be the duty of the committee to make as complete an investigation as time permits of all organizations whose principles or activities include a course of conduct on the part of any person or group which would constitute violence, or a violation of the laws of the state, or would be inimical to the well-being and orderly pursuit of their personal and business activities by the majority of the citizens of this state. Such investigations shall be conducted with the purpose of reporting to this legislature of the activities of such organizations to the end that corrective legislation may be adopted if found necessary to correct any abuses against the peace and dignity of the state."

Although the constitutionality of the statute is assaulted by the appellants, we think we adequately disposed of this

contention by our opinion in In re Petition of Edward T. Graham, etc., supra. There, the same Graham who is presently an appellant had sought to quash a subpoena duces tecum requiring him to produce the books, records and membership lists of NAACP. We sustained the act against an assault on its constitutionality. We now re-affirm our view that the act is constitutional. In our former order we affirmed the trial judge when he denied a motion to quash the subpoena on the ground that Graham's objections because of alleged lack of pertinency to the subject of the inquiry authorized by the statute were premature. We held that it would not be possible to determine whether the subject inquiry would violate his constitutional rights until we were confronted by the actual questions to be proponded.

LEGISLATIVE POWER TO INVESTIGATE

It has long been recognized that a legislative body has the power to conduct investigations in order to obtain information on subjects of legislation. Implicit in the power to legislate is the authority to seek out and acquire needed information in the rightful exercise of that power. This may be done through duly constituted committees. Compulsory process is a procedural incident to obtaining the information. McGrain v. Daugherty, 273 U. S. 135, 71 L. ed. 580. Once a valid legislative objective is established then the power of inquiry with effective process to obtain it is an essential concomitant of the legislative authority to act. We here inject the warning that this is not an unbridled power of government. Moderation, restraint and caution should be the rule in exercising it. If not circumscribed by reasonable limitations it is one which could lead to abuses with attendant encroachments on individual liberties. The privilege should never be sadistically employed as a media to "hunt witches." It should

never be exercised merely for the sake of disclosure to the detriment of the citizen under interrogation. Legitimate legislative action is the ultimate objective and the prime justification for the inquiry.

We find in this record no evidence whatever that the appellee Committee has in any fashion abused its powers or undertaken to embarrass the appellants merely for the sake of arbitrary disclosure. In actuality the counsel for the Committee publicly announced that no inferences adverse to any of the witnesses should be drawn merely from the fact that they were subpoenaed. He made it clear that the fact that a witness was called should not be construed as a suspicion of his disloyalty. At the opening of the hearing the Chairman of the Committee clearly delineated by an opening statement the reasons for and the subject of the inquiry. His statement is summarized in more detail hereafter. He did this in order to enable the witnesses to determine the pertinency of the questions propounded to them. Chapter 57-125, supra, was read in its entirety. It was made clear throughout the hearing that the NAACP, as an organization, was not considered in and of itself to be associated with the Communist Party. It was pointed out that the purpose of the inquiry was to determine whether members of the Communist Party or fellow travelers had so surreptitiously penetrated and infiltrated the NAACP, as well as other legitimate organizations, as to justify state action on the subject. There can be no doubt, therefore, that all of the witnesses were fully informed as to the subject of the inquiry.

We come next to determine the essential question as to whether the inquiry was being conducted to obtain information to support legitimate legislative objectives. In other words, could the information sought by the Committee be employed by the Florida Legislature as a basis for enacting laws or pursuing other proper legislative action?

State Control of Sedition

The appellants objected to the pursuit of the investigation by the Committee on the ground that the Florida Legislature had no authority to enact the enabling statute. They further contended that the subject of the inquiry announced by the Chairman was not within the power of the State of Florida to pursue. These contentions were based on the theory that the inquiry was aimed solely toward the investigation of seditious persons, organizations and conduct. They then assert that in Commonwealth of Pennsylvania v. Nelson, 350 U. S. 497, 76 S. Ct. 477, 100 L. ed. 640, the Supreme Court of the United States has held that by the passage of the so-called Smith Act, 18 USC Section 2385, the Congress of the United States has pre-empted the entire field of control and prevention of sedition and the prosecution of seditious conduct. On this reasoning appellants conclude and ask us to agree that the State of Florida is now powerless to control or prevent seditious conduct against the government of the State, the infiltration or penetration of subversive and seditious persons into the community life of the state or into legitimate organizations such as NAACP, which otherwise enjoy the protection of the laws of the state, or in any fashion to direct the exercise of the State's lawmaking powers against these or similar activities.

On this point we are of the view that there is no controlling authority and we are frank to state at the outset that if such is to be the law of Florida, some other court will have to exercise the dubious privilege of announcing it. We do not accord to the opinion of the highest court in the land in Commonwealth of Pennsylvania v. Nelson, supra, the broad comprehensive sweep that is contended for it by the appellants and even conceded by the briefs of the appellee Committee. Admittedly, that decision has been the subject of much comment and some adverse criticism. See Report of Committee on Federal-State Rela-

tionships, Conference of Chief Justices, August 23, 1958. In support of the decision, see remarks of Chief Justice Charles Alvin Jones of Pennsylvania filed with the Conference on the same date.

The Supreme Courts of some states have taken the position that the Nelson decision determined that by the passage of the Smith Act, Congress has pre-empted every aspect of the field of controlling seditious conduct, even when directed against a particular state. Cf. Albertson v. Millard, 345 Mich. 519, 77 N. W. 2d 104; Braden v. Commonwealth, — Ky. —, 291 S. W. 2d 843. Illustrative of a more limited interpretation of the Nelson opinion is Commonwealth v. Gilbert, — Mass. —, 134 N. E. 2d 13. There, the Supreme Judicial Court of Massachusetts held that because of the Nelson case an indictment charging advocacy of the violent overthrow of the government of Massachusetts would have to be quashed on the theory that Congress had pre-empted the field. The Massachusetts court, however, expressly stated that in its view there could be some kinds of sedition directed so exclusively against the state as to fall outside the scope of Commonwealth of Pennsylvania v. Nelson, supra.

In State v. Diez, Fla. 1957, 97 So. 2d 105, we ourselves have previously taken note of the Nelson decision. As against the identical contention now submitted by these appellants, we upheld Section 786.22, Florida Statutes, requiring a so-called Loyalty Oath as a condition to public employment in this state. We there pointed out and we here repeat for emphasis that in the Nelson case the State of Pennsylvania had indicted Nelson for advocacy of the violent overthrow of the government of the United States contrary to the Pennsylvania statute. See Commonwealth v. Nelson, 377 Pa. 58, 104 A. 2d 133. Nowhere in the charges against Nelson were there any allegations of seditious conduct against the state. The decision of a court must necessarily be read in the light of the factual situation which produces it. In the Nelson case the Supreme Court

of the United States was confronted solely and entirely with the charge of seditious conduct against the United States in violation of a state statute. It is inconceivable to us that the decision could or should be given controlling effect in situations which were not even remotely before the Supreme Court of the United States when its decision was rendered. We certainly respect the authoritative effect of the Nelson decision to the extent that it holds that Congress has pre-empted the field of controlling sedition against the government of the United States. Under all recognized bases for interpreting and construing judicial decisions, we do not feel compelled to accord to the Nelson opinion a more comprehensive or far-reaching effect.

We adopt this view simply because we are not persuaded by Nelson or any other decision that the virility of the states to cope with purely internal problems can be reduced to a condition of impotency by any astute process of judicial sterilization.

By Chapter 876, Florida Statutes, the Legislature of this state has undertaken to prohibit and control any conduct that would lead to the forceful or violent overthrow of the state government. The statute makes illegal the assembly in Florida of two or more persons having as their purpose the promotion or advocacy of such conduct. It appears to us that it would be unthinkable to hold that a state legislature is powerless to prohibit such conduct or the holding of such assemblies within the geographical confines of the state itself.

By Chapter 28221, Laws of Florida 1953, commonly known as the subversive activities law, Sections 876.22-876.30, Florida Statutes, the Legislature of Florida has undertaken to define various subversive organizations. It has prohibited the establishment of such organizations in this state and has proscribed the defined subversive conduct with criminal penalties as the punishment for violation.

To the extent that such statutes proscribe conduct which is inimical to the welfare of the people and the government of this particular state, the Florida Legislature has exercised a legitimate state function. Our search reveals no controlling precedent to the contrary.

OPENING STATEMENT OF CHAIRMAN

At the outset of the hearings involved in this matter the Chairman of the Committee informed all of the witnesses collectively, including the appellants, that the Committee would concern itself with the activities of various organizations operating in Florida in fields of race relations, the coercive reform of educational and social practices by litigation and pressured administrative action, in the field of labor, education and other phases of life within the state. He told them that to this extent the Committee would concern itself with the Communist Party, its members, its activities, its aims and objectives and the degree, if any, to which Communists and Communistic influences had successfully penetrated or infiltrated various organizations operating in the fields of endeavor which he had previously summarized. Admittedly NAACP is an organization active in the area of race relations. The announced purposes of the Committee inquiry were well within the orbit of the authorizing statute and likewise within the power of the State of Florida to accomplish.

In addition the Committee points out in its brief that aside from any question of pre-emption of control of seditious activities by the Congress, every state has a right to instigate and inaugurate a process for amending the United States Constitution provided it can succeed in obtaining the agreement of the Legislatures of two-thirds of the states. Article V, Constitution of the United States. Under the cited Article of the Federal Constitution, whenever the Legislatures of two-thirds of the states petition the Congress so to do, it is bound to call a Convention for

proposing amendments to the Constitution of the United States which amendments shall be subject to subsequent ratification by the Legislatures of three-fourths of the states. Here, we think, the appellee-Committee correctly reasoned that the Florida Legislature has the right to inform itself of the existence or non-existence of the sedition described in order to exercise a proper legislative function. That function is to determine whether the Legislature of Florida deems it wise to institute a movement among the several states to obtain the accord of at least two-thirds of them on an application to the Congress to set in motion the amending procedure. Here again we find a perfectly legitimate area of legislative activity that justifies the pursuit of the investigation under review.

Self-Incrimination

The trial judge was of the view, as we are, that Commonwealth of Pennsylvania v. Nelson, supra, did not eradicate the subversive activities statutes of the State of Florida insofar as the State itself is concerned. In logical accord with this view he held that when certain of the appellants declined to answer questions regarding their affiliations with the Communist Party on the ground that such answers would tend to incriminate them contrary to the protective provisions of the Fifth Amendment to the Constitution of the United States and Section 12 of the Declaration of Rights of the State of Florida, they were entitled to refuse to answer for the asserted reason. Inasmuch as we have approved the ruling the trial judge to the effect that the Florida subversive control statutes remain effective and inasmuch as these statutes prescribe criminal penalties for violation, we must in turn affirm his ruling to the effect that the witnesses who were interrogated with reference to their own personal Communistic activities could legitimately assert the protective provisions of Section 12,

Declaration of Rights of Florida. In this connection we observe in passing that if it were held that the Congress has pre-empted the entire field to the extent that the Florida Statutes against sedition and subversive conduct are no longer effective, then, of course, Section 12 of our Florida Declaration of Rights would offer no defense against answering these particular questions. Similarly, we have the view that under such a holding the Fifth Amendment to the Constitution of the United States would offer no barrier to State action for the simple reason that there is not here apparent any semblance of an imminent danger of federal prosecution as a result of the State action.

The rule appears to be reasonably well settled that the Fifth Amendment to the Federal Constitution is a limitation only on Federal action. It does not restrict State action, absent the presence of an impending or imminent Federal prosecution as a result of the action by the State. Knapp v. Sweitzer, — U. S. —, 2 L. ed. (2d) 1393, 78 S. Ct. —; Lorenzo v. Blackburn, Fla. 1954, 74 So. 2d 289. Admittedly, to many, this constitutional guarantee against compulsory self-incrimination is little understood and seldom justified in application. We agree that it is rapidly becoming a burden of the American political and judicial conscience to reconcile our organic guarantees of freedom, of which this is one, with the demanding necessity of ferreting out and bringing to proper justice many of our own citizens whose lack of civic conscience permits them to betray the very freedoms which they claim as their protective armor against the purifying glare of public inspection. The fact remains, however, that both the State and Federal Constitutions establish the right. This court has no power to tamper with either document. If a change is made the people will have to make it.

Pertinency

The next assault on the various questions which appellants were ordered to answer and which are summarized

above is based on their contention that the questions lacked pertinency to the subject of the inquiry. To support this contention we are referred to the decision of the Supreme Court of the United States in Watkins v. United States, 354 U. S. 178, 1 L. ed. (2d) 1273, 77 S. Ct. 1173. It is true that the Watkins decision announced the rule that the questions propounded in a legislative investigation should be pertinent to the subject of the inquiry. It affirms the position, which we have previously announced, that the subject of the inquiry should be made sufficiently clear and definite to inform a witness of the nature of the matter under inquiry. This is so in order to enable the witness to determine the pertinency of any particular question as well as to evaluate his privilege of declining to answer if such is available. The subject of the inquiry should not be afflicted with the so-called "vice of vagueness" thereby depriving the witness of his constitutional rights while under interrogation. In the Watkins case the Supreme Court suggested several methods by which this "vice of vagueness" can be avoided. One is by the authorizing statute or resolution which establishes the Committee and so clearly defines the subject under inquiry that a witness can understand the pertinency of questions propounded to him. A second method is by an "opening statement" by the Chairman of the Committee outlining in detail the subject of the inquiry. This assumes, of course, that the subject of inquiry announced by the Chairman is within the orbit of authorized investigation provided by the enabling statute or resolution. Furthermore, in Watkins the majority pointed out that while purportedly that investigation was dealing with subversive activities in the field of labor, actually many of the witnesses had nothing to do with the labor movement. Here the contrary appears as to members of NAACP.

We find no difficulty in holding that the questions which the trial judge directed the witnesses to answer were in most instances clearly pertinent to the legitimate subject

of the inquiry. We will later point out the limited exceptions to the order. Chapter 57-125, supra, the enabling statute, in itself, with reasonable clarity outlined the nature of the investigation. This was supplemented by a positive, clear-cut delineation of the purpose of the inquiry made by the Chairman of the Committee at the outset. Rather than being afflicted with the "vice of vagueness" in this instance, we think that both the enabling statute and the opening statement of the Chairman clearly defined the purpose and scope of the inquiry. Subject to an exception we shall mention that we have the view that the questions here involved were pertinent to the authorized inquiry.

Committee Prejudice

The witnesses Gibson and Albury declined to answer any questions or produce any documents on the ground that the Committee had demonstrated a prejudice that precluded its members from sitting in impartial deliberations over the hearing. They base this contention on statements made by two Committee members at the conclusion of the appearance of the witness Perry. The sum of these statements simply was that in the opinion of one of the Committee members, the witness had been evasive; that she had refused to supply information that would enable the Committee to be of subsequent service to the state; that in so doing she was rendering a great dis-service to the organization of which she was a member as well as to the citizens of Florida. The remarks concluded with the observation that in the opinion of the Committee member the attitude of the witness "is a disgrace". These observations culminated in a motion that counsel for the Committee be directed to prepare procedures to cite the witness for contempt. Another Committee member echoed similar sentiments and seconded the motion. When the witnesses Gibson and Albury subsequently appeared before the Committee pursuant to summons, they refused to answer any

questions with their contention that the Committee was biased, prejudiced and unfair. These two appellants cite no authority to support them in their refusal to respond to questioning.

In the first place as we read the remarks of the two members of the Committee we find in them nothing that indicates a bias or prejudice against the complaining appellants or as a matter of fact against the witness to whom they were directed. Our examination of this record suggests that several of these recalcitrant and sometimes defiant witnesses including appellant Perry consistently challenge the authority of the Committee and clearly displayed a policy of complete non-cooperation. We conclude that the witnesses had a perfect right to assert their various constitutional privileges which they deemed to be available. They have the same privilege here. At the same time we are not aware of any constitutional privileges that authorizes one so conditioned to defy, berate, or otherwise arbitrarily challenge a duly constituted authority in the exercise of a lawful power. This record sustains the further notion that this Committee and its counsel have throughout this proceeding personified a degree of patience and composure customarily demanded only of judicial officers. For this they are to be commended. The sum of these observations is simply that the two appellants Gibson and Albury have tendered no genuine ground whatsoever for reversal.

NAACP Membership List

We now approach the contention of the appellant Graham and others with regard to the requirement of the subpoena duces tecum directing them to produce the books, records and membership lists of NAACP. The complaining appellants have produced no records whatsoever. In fact, they admitted at the hearing that they did not bring

any of the required records nor did they account for the whereabouts of the records. They have refused to do either. They have objected particularly to the production of the membership lists showing the names of members of the Miami Branch of NAACP. We have the view that the other records are of no material consequence here. They contend here that the order of the trial judge requiring them to respond to the subpoena by the production of such membership lists is directly contrary to the decision of the Supreme Court of the United States in National Association for Advancement of Colored People v. State of Alabama, ex rel. John Patterson, Attorney General, —U. S. —, 2 L. ed. (2d) 1488, 78 S. Ct. —, hereafter cited as NAACP v. Alabama. The decision last cited was rendered subsequent to our decision In re Petition of Edward T. Graham, etc. Fla. 1958, 104 So. 2d 16. Appellants contend that the effect of our former decision in the Graham matter has been superseded by the decision of the United States Supreme Court in NAACP v. Alabama, supra. In support of their position that they should not be required to produce the membership lists of the Miami Branch of NAACP, these appellants contend that the freedom to engage in a legitimate association for the advancement of beliefs and ideas is an aspect of liberty guaranteed to them by the due process clause of the Fourteenth Amendment to the Constitution of the United States. It is their position that freedom to associate with those of kindred minds for the advancement of legitimate beliefs and ideas is related to the constitutional guarantee of freedom of speech. It should not be curtailed, so they assert, absent some showing of a compelling state interest that justifies the subordination of the individual liberty to the essential requirements of the welfare of the state.

They further assert that in view of the nature of NAACP as an organization devoted to the advancement of the educational, social and economic well-being of the Negro, they occupy, so they contend, a relatively unpop-

ular position in some sections of the country, including Florida. In view of the alleged lack of popularity of the organization itself, as well as its objectives, these appellants then follow with the assertion that the compulsory production of their membership lists revealing the names of their "rank and file members", many of whom earn their living in various menial pursuits, would be to deter such members from participating in the affairs of the organization, from exercising the right to associate and express themselves on the objectives of the organization, and in a measure would result in economic repercussions such as discharge from employment merely because of affiliation with NAACP.

We interpolate that unlike the situation presented in NAACP v. Alabama, supra, the appellants here have not demonstrated by any evidence whatsoever that the production of their membership lists or the identification of members would have such a deterrent effect in the State of Florida. With reference to the attitude of the people of Florida regarding NAACP suffice it to observe that we judicially know from our own records and otherwise that NAACP has actively engaged in the pursuit of its objectives openly, aggressively and without let or hindrance in the State of Florida. The record here presented reveals nothing to the contrary.

In NAACP v. Alabama, supra, the United States Supreme Court was presented with a situation in which the State of Alabama, acting through its Attorney General, was undertaking to oust NAACP from engaging in any intrastate activities because of its failure to comply with the Alabama foreign corporation registration statute. The statute required such a corporation to file its corporate charter and designate a place of business and an agent to receive service of process in the State of Alabama. In the Alabama case NAACP complied with all requirements such as the furnishing of its business records, a copy of its charter, the statement of its purposes, the name of all of

its officers and directors, the total number of members within the state and the amount of its dues. They declined to furnish the membership lists which in actuality does not appear to have been a requirement of the Alabama statute. Apparently the list of members was requested merely to attempt to ascertain whether NAACP was engaging in an intrastate business in Alabama. As pointed out above, evidence was presented that satisfied the Supreme Court of the United States that the furnishing of the membership lists would have a deterrent effect upon the exercise of the constitutionally protected right of association asserted by the corporation in behalf of its rank and file members. We pretermit any discussion of the fact that in these appeals NAACP as a corporate entity is not a party.

In addition to recognizing the existence of this individual right as well as a guarantee of its protection by the due process clause of the Fourteenth Amendment, the Supreme Court of the United States in the Alabama case held in sum that in the particular proceeding there involved the interest of the state in obtaining the list of members was not of sufficient compulsion to override the deterrent effect asserted by NAACP. Constitutionally speaking the ultimate conclusion simply was that in order to justify the restriction on the exercise of the individual right to associate, due process under the Fourteenth Amendment requires that the state exhibit a compelling reason motivated by the general welfare.

We do not undertake to question the authoritative effect of the Alabama decision. Admitting for the matter at hand the controlling aspects of the Federal Constitution as interpreted by the Supreme Court of the United States in that case, we have the view that the instant case does not fall within the prohibitive adjudications of that pronouncement. Here, there is no showing whatsoever of the [illegible] tended deterrent effect. No effort was made to demonstrate it in any evidentiary form. We are here confronted with a bald assertion of the described constitutional

association with no demonstration of infringement as a result of the attempted state action. Furthermore, in the instant case the purpose of the inquiry as authorized by the enabling statute and as delineated by the Committee Chairman certainly, in the absence of any showing to the contrary, tenders a compelling reason in the public interest to conduct the investigation and to require the availability of the requested records as hereafter announced.

We have previously concluded in this opinion that the State of Florida is acting within the orbit of the powers saved to it by the Tenth Amendment when it undertakes to explore the membership of various organiz legiti mate perhaps within themselves but suspec g the victims of surreptitious infiltration and ub versives and others engaged in illegi

Assum , therefore, the legiti tive and the controlling justificati interest, we have the view tha Committee in the instant ca officers or custodians of NA ing the membership rec with the requirements tions announced by t in National Associ v. State of Alab ion of Edwa from this r vealing th that th and

the Miami Branch of NAACP. It is then contended that it is necessary to inspect the entire membership lists in order to determine whether such allegedly subversive individuals are in fact members of NAACP. Admittedly, the appellee Committee is investigating only subversive infiltration of the organization. Consequently, the entire contention of appellee on the subject of pertinency on this particular point is limited to the sole proposition of ascertaining whether certain known or suspected Communists or subversives are in any way affiliated with the activities of NAACP. In view of this position of the appellee, the limitations of the requirement of pertinency would restrict their exploration of the membership of the organization to obtaining from the officers or custodians of the membership lists a statement under oath as to whether such suspect persons are in any way associated with NAACP based upon such custodian's reference to the available membership lists or other means of answering the inquiry, such as having seen such suspected person at meetings of NAACP. Such procedure, we think, accords due regard to the pertinency requirements of Watkins v. United States, supra, as well as the due process requirements of National Association for Advancement of Colored People v. State of Alabama, supra. There may, of course, be other pertinent reasons for obtaining the names of officers, directors and particular members of Miami Branch, NAACP, but pertinency would have to be demonstrated when the inquiry is made.

Similarly, and for identical reasons, we think the trial judge ruled correctly in requiring the various appellants to answer the questions as to whether they themselves were members of NAACP at the time of the inquiry. Conceding the legality of the association and admitting, as the Committee's counsel publicly announced, that no stigma attached merely from membership and further granting to appellants their own contention that their objectives were of the highest, it would be difficult for us to agree that there

is constitutional justification for their refusal to answer whether or not they are members. Certainly, this must be the rule in view of the state of this record which fails to disclose any factual basis for a conclusion that the giving of an answer to such questions would result in an illegal invasion of their constitutional right of association.

In accord with the same point of view, but recalling that we have previously affirmed the ruling of the trial judge that certain appellants could employ the cloak of Section 12 of the Declaration of Rights of Florida against answering specific inquiries in regard to their own Communistic activities, we can see no reason why a particular witness who has been properly identified as an officer or member of NAACP should be excused from answering an inquiry as to whether a person who has been otherwise identified with the Communist Party or Communistic activities is a member of NAACP or has participated in its meetings. In this regard we have the view that merely because one knows a Communist, or happens to have been in the company of a Communist, does not convert him into a Communist. Most of the appellants have filed statements affirmatively disclaiming even the remotest personal association with the Communist movement. There is nothing before us which suggests an effort to adjudicate their guilt by association contrary to their own protestations of absolute innocence.

Holding as we have that the legislative objectives of the Committee are legitimate, we think the appellee is within its authority to ascertain whether particular organizations operating in the fields mentioned in the Chairman's opening statement have been afflicted by Communist or subversive infiltration. Illustrative of the type of questioning we here have in mind is the inquiry propounded to the appellant Perry when she was asked by Committee counsel, "Do you know a man named Arlington Sands", the question being accompanied by a statement of counsel that on the preceding day another witness before the Committee had identified Sands as one seen by him in Communist

Party meetings in Miami and known by him to be a member of the Miami Branch of NAACP. We deem such a question appropriate even though Sands himself, under oath, denied membership in the Communist Party.

ATTORNEY-CLIENT RELATIONSHIP

Appellant Gratton E. Graves, Jr., who was admittedly attorney for Miami Branch of NAACP was interrogated as to whether he had brought with him certain records of the Association including the membership lists as required by the subpoena duces tecum. He responded that he had not and further stated under oath that he did not have custody of the records. He was then subjected to a line of interrogation as to whether on a previous hearing conducted by the immediate predecessor Committee of the appellee he had testified under oath that he had sent these records to the New York headquarters of NAACP and that he would make a good faith effort to obtain their return to Florida. He was asked whether he had made any such effort and was questioned as to the then-present custodian of the records. He declined to answer any of these questions asserting that an answer would require revealing confidential information obtained by him in his relationship as attorney for his client, Miami Branch of NAACP. On the contempt citation the trial judge overruled the objection and directed a response.

We need not concern ourselves on the failure of the witness Graves to produce the records for the reason that he stated under oath that he did not have them. As to the questions regarding his prior testimony before the predecessor Committee and the assurances which he then gave as a witness under oath, we see no basis for excluding answers because of the attorney-client relationship. This is so because of the fact that the witness had already testified as to the then-whereabouts of the records, as to his part in

transferring the records out of the state and as to the effort that he would make to obtain their return. These questions merely referred back to the prior testimony which was a matter of record and obviously did not involve confidential communications between attorney and client. On the contrary they involved communications between the witness and the Committee. Bearing in mind that we are not here concerned with any problem of requiring an attorney to reveal a communication that would incriminate his client, we think that it was appropriate to require the witness to respond to the questions as to the present custodian of these records. Inasmuch as we have held that any of the appellants who might be custodians of records would be required to have them available at the hearing, we think it would be illogical to hold that any such custodian could turn these records over to the attorney for the Association to enable the attorney in some fashion to secrete the records and thereby place them beyond the power of the state in a proper proceeding to obtain information as to their whereabouts. The records here sought were not the work-product of the attorney's preparations to represent his client. See Atlantic Coast Line Railroad Company v. Allen, Fla. 1949, 40 So. 2d 115. We have here documents belonging to the client which should be produced if they were in the custody of the client but which an attorney apparently endeavors to conceal by transferring them to the custody of some unnamed individual at some unstated location.

While we recognize that the attorney-client relationship is one of utmost confidence, we think that the rule of exclusion that protects confidential communications arising out of this relationship cannot be invoked to enable a client to use the office of the attorney to evade or avoid an obligation to the courts or other investigative body which the client himself would be required to recognize.

Questions Lacking Pertinency

Throughout the interrogation of several of the appellants, counsel for the Committee would ask the witness; for example, "Do you know Bertha Teplow", or "Do you know Anna Rosenblatt?" We point out that the questions quoted are merely illustrative of a type of interrogation. To illustrate the point we are about to make we mention a question appearing elsewhere in this opinion where a witness was asked, "Do you know Arlington Sands", and the counsel for the Committee supplemented his question by explaining that a previous witness had testified that Arlington Sands was a suspected member of the Communist Party, thereby demonstrating the pertinency of the inquiry. We have held this to be a pertinent and proper question. However, we think that in the absence of a showing of pertinency by relating the name of the person to a proper subject of the inquiry, the bald question, such as, "Do you know Bertha Teplow", would not, in and of itself be pertinent to the inquiry within the rules which we have hereinabove announced. Had counsel gone further, as he did in the "Arlington Sands question", and explained the pertinency of the question by stating the relationship between Bertha Teplow and the subject of the inquiry, then it would have been proper to have required an answer. However, until such pertinency is made clear to the witness, he would be justified in declining to answer on the ground of lack of pertinency. In these instances, therefore, we are compelled to disagree with the trial judge and his order directing answers to particular questions of which these are illustrative will have to be reversed. In an investigation of this nature, unless the pertinency of the question is indisputably clear, when a witness objects on grounds of lack of pertinency it is the duty of the investigative body to point out the manner in which the propounded question is pertinent to the subject of the inquiry. Watkins v. United States, supra.

Summary of Holdings

For the guidance of the lower court and the parties, we herewith summarize our holdings as follows:

(1) Chapter 57-125, Laws of Florida 1957, establishing appellee Committee is constitutional.

(2) The Florida Legislature, through appellee Committee has the power to investigate the matters stated in the statute and announced by the Chairman as the subject of the inquiry.

(3) A state government acting through its Legislature has the power to control seditious conduct leveled against the state or the conduct of subversive activities within the state. It therefore has the power to investigate the conduct of such activities within the state as a preliminary to legislative action.

(4) The subject of this inquiry was made sufficiently clear by the provisions of the enabling statute and the opening statement of the Chairman.

(5) Certain questions were not shown to be pertinent to the inquiry on the face of this record. Other questions were demonstrated to be clearly pertinent and should be answered or propounded.

(6) There was no basis for the contention that the appellee Committee had disqualified itself by reason of an alleged exhibited prejudice.

(7) Witnesses who were directed to have available the records of NAACP should have them available or else disclose their whereabouts, if they can do either. Such witnesses may be required to refer to such records and answer under oath any inquiry regarding any individual whose association with NAACP is shown to be pertinent to the inquiry in accord with the rules announced in this opinion.

(8) The attorney-client relationship is no barrier to answering the inquiries propounded to the witness Graves.

CONCLUSION AND JUDGMENT

As conclude with a degree of apology for the prolixity of our pronouncements we indulge ourselves the hope that it will be apparent to all parties to this record that their cause has been fully and fairly considered. Though the pathway to justice is sometimes as awesome as that which led Sir Galahad to the Holy Grail, nonetheless, the achievement of the desirable objective is equally rewarding and justifies the effort.

As to the appellants Gibson and Albury the judgment is affirmed. As to the other appellants the judgments are affirmed in part and reversed in part and the cause is remanded to the trial judge for further proceedings consistent herewith.

It is so ordered.

TERRELL, C. J., concurs with opinion.

ROBERTS, DREW and O'CONNELL, JJ., concur in opinion by THORNAL, J.

TERRELL, Chief Justice, Concurring.

I agree with the pronouncements in the very thorough opinion prepared by Mr. Justice Thornal. I do not overlook the fact that one being tried by the appropriate court is entitled to the benefit of every constitutional guaranty in support of his defense but in this case appellants were being investigated for subversive activities, clearly violative of state and federal law. Not only that, they are in contravention of the philosophy and principles on which democratic government as we know it rests. When one is charged with being a member of, or who lends allegiance to, an institution or organization which has for its purpose

the overthrow of this government by force or violent means, it is not becoming in him to hide or secrete his conduct or identity from an investigating committee. It would be more becoming for him to come forward with proof that he has no connection with such activities and demonstrate conclusively that the charges are groundless. It is the shortest and in fact the only means by which he can clear himself and erase the shadow cast upon him by the charges. A lawyer cannot, consistent with his oath, defend against such charges on any other ground.

(Order on Petition for Rehearing)

(Filed January 28, 1959)

On consideration of the Petition for Rehearing filed by Attorneys for Appellants,

IT IS ORDERED by the Court that the said petition be, and the same is hereby, denied.